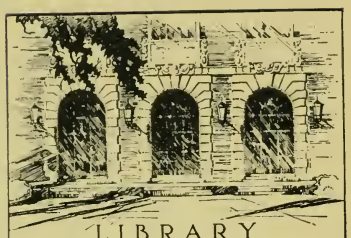

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Marriage with a Deceased Wife's Sister.

LEVITICUS XVIII. 18,

CONSIDERED IN CONNECTION WITH THE LAW OF THE LEVIRATE.

A LETTER

TO

THE RIGHT HON. THE LORD HATHERLEY,

LORD HIGH CHANCELLOR OF ENGLAND,

&c., &c., &c.

BY

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Marriage with a Deceased Wife's Sister.

A LETTER

TO THE RIGHT HON. THE LORD HATHERLEY,

Lord High Chancellor of England,

&c., &c., &c.

My Lord,

The deep interest which for a long period you have taken in preserving intact our Table of Degrees as to prohibited marriages, will, I hope, sufficiently account for my wish to address the following remarks to your Lordship, and your unvarying kindness will no less account for the ready permission which you have given me to do so. I will not take up any time in preface further than just to observe that of course you are not in any way responsible for the views or the argument of the ensuing pages, though I am, I hope, justified in believing that, whatever be their imperfections, the object at which they aim will meet with your sympathy and approval. My earnest and anxious wish is to do what I may, God helping me, to aid in averting what I feel would be a grievous sin if our marriage law were altered in the sense desired by the promoters of the Wife's Sister's Marriage Bill. I do not purpose to go over the whole ground which has been so often contested, (to do which would be almost an impertinence in remarks addressed to your Lordship), but rather to confine my observations to the Scriptural

argument, or, perhaps I should say, to a portion of the Scriptural argument against the change proposed, viz.—to the due sense and application of the 18th verse of the xviii. chapter of Leviticus.

There is, I suppose, no room for reasonable doubt that the case of the advocates of a change in our law which may sanction the marriage of a man with his deceased wife's sister, rests mainly, so far as the Scriptural argument is concerned, upon the 18th verse of the xviii. chapter of Leviticus. "Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other, in her life time," where, the translation being assumed to be correct, the interpretation put upon it is that if such a union is forbidden in the life time of the first wife, there is a tacit sanction of the same after her decease. If it were not for this one verse thus translated and thus interpreted, there would, I think, hardly be a question raised or a doubt felt by one in a thousand that such unions are prohibited, denounced as incestuous, and forbidden under God's general law, just as we find them set down in Archbishop Parker's table of prohibited degrees.

The importance, then, of this verse being admitted as to the right understanding of God's will in this matter, I propose briefly to call attention to some points connected with it which I think have not received the consideration to which they are entitled. My aim will be to show, even conceding the whole demand as to the correctness of the translation found in the Text of our authorized version, and not disputing the inference that there is a certain tacit sanction of such a Union with the second sister after the death of the first, yet that upon a careful consideration, it may most reasonably be maintained that the sanction does not extend to any general permission of the same, but that the enactment or permission is made

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and given for one special object only, and is limited to one particular condition of things, incident only to the Jewish economy, to meet which it is definitely designed and restricted; that therefore it involves, rightly understood, no contradiction at all to the law laid down generally that none shall approach to any near of kin to him (v. 6), nor to the cases which follow illustrating the meaning of that law (v. 7—17), nor, therefore to the prohibitions generally, nor to that one among them particularly, that a woman shall not marry two brothers—extended by direct analogy to the converse case, that a man shall not marry two sisters; in other words, that though the translation, and the inference to a certain extent, be both conceded, yet there is an ample and true sense for the passage, and full scope for its intention and enactment, without its for a moment clashing with the prohibitions of the general law.

But first I would say a word to clear the position that but for this 18th verse of the xviii. chapter of Leviticus, no one would doubt, as to the prohibition in question.

How does the case stand? The xviii. chapter of Leviticus deals first (as the heading states), with "unlawful marriages." After declaring emphatically, in the first five verses, the importance of keeping God's law, and warning the people against falling into the sins of the Egyptians and the Canaanites, the matter itself is opened in the 6th verse—"None of you shall approach to any that is near of kin to him to uncover their nakedness: I am the Lord." "This," as you, my lord, observed at the meeting at Willis's Rooms, (February 1st, 1860,) "is the key-note to all that follows. The law then shows who are near of kin to us, and proceeds to mention more cases of affinity than of relationship by blood."* I am aware that it has been contended on philological grounds that the terms "near of kin" are

* Speech of Vice-Chancellor Sir W. P. Wood. p. 5.

necessarily confined in their sense to kindred by blood relationship, and cannot embrace relationship by marriage; but I do not feel that there is any material weight in the critical examination of such a passage, as to the general use of a phrase or word, because it seems to me we have here the comment of the Holy Ghost Himself in what follows as to the sense in which the words "near of kin" are, in the connection in which they there stand, to be understood; that is to say, that which follows gives, by the details of the enactments ensuing, God's own comment as to what is intended by "near of kin," and if these details be found to embrace affinity as well as, and as much as, blood relationship, it appears to me that the consideration of what in other cases is the usage of the term, must be beside the question we have before us. Nay, is it not, indeed, very probable that terms, which in their ordinary usage would refer simply to blood relationship, are here chosen by Divine inspiration to include also relationship by affinity, for the very purpose of showing that a man and his wife being one flesh, the nearness of kin here contemplated, and illustrated by the instances which follow, was to embrace both relationships alike? I do not know how better to shew that, in the whole connection of this passage, the enactment is of the kind which I have mentioned, than by a quotation from the pamphlet of Mr. Keble, published in 1849. Though, my lord, you and others have said the same things, you will, I am sure, bear with me whilst I recall the passage as it stands in the words of that revered writer. After shewing the scope of the law to extend not merely to the Jews by the curse which it entails having been brought upon the very heathen who gave way to such iniquities, he says:—

"Now, what are the customs which were so abominable in the old inhabitants of God's Holy Land, and caused the

land itself to vomit them out? (the customs, I mean, in respect of marriage: for of the other horrors mentioned in this chapter we are not now compelled to speak.) They are all forbidden in one general principle: 'None of you shall approach to any that is near of kin to him, to uncover their nakedness: I am the Lord.' This being laid down in the 6th verse, the following verses allege so many instances, whereby God's people might understand what 'near of kin' means. And it is remarkable, that in this enunciation the law makes no distinction between those who are akin by marriage and those who are akin by blood, but mentions them indiscriminately, as if the one sort were precluded from marrying under the same penalties as the other.

"For these are the degrees expressly forbidden, in their order. First, a natural mother, in v. 7. Next, a father's wife, or step-mother, in v. 8: which is the case mentioned in 1 Cor. v. 1. Next, a sister, v. 9. Next, a grand-daughter, v. 10. Next, a half-sister, v. 11. Next, an aunt by the father's side, v. 12. Next, an aunt by the mother's side, v. 13. Next, an aunt by marriage with an uncle, v. 14. Next, a son's wife, v. 15. Next, a brother's wife, v. 16. Next, a wife's daughter, mother, or grand-daughter, v. 17.

"Here are thirteen cases in all: six of kindred by blood, and seven of kindred by marriage: and neither by the order in which they follow one another, nor by any difference of expression regarding them, is any hint given, that the one sort of profanation is less heinous in God's sight than the other. The world may have come to think there is a difference, because the world will not believe that man and wife are really one flesh. But the written law of God apparently deals with both alike."*

* Against profane dealing with Holy Matrimony, by the Rev. John Keble, pp. 12, 13. J. H. Parker. 1849.

He then adds :—

"The next remark I have to make on this, which is God's own table of prohibited marriages, is one which it seems to me that no fair mind can deny. Indeed, one is half ashamed to enounce it, it is so obvious: yet the reasoning on the other side appears to be mainly based on the denial of it. It is simply this: that nearness of kin not being affected by sex, what is forbidden to a man is forbidden to a woman in the same degree of kindred or affinity, though it be not set down in words. For instance, in v. 7, a man is forbidden to marry his mother: then, by the same rule, a woman is forbidden to marry her father, though the prohibition is not expressed. Surely it would be fearful paltering with God's law, not to accept and obey such a plain rule as this. And it is to be observed, that these Canons are all addressed to men only: the woman's duty and the woman's sin are left to be inferred in each case: but what should we think of the woman who should therefore account herself left at liberty, so far as the Levitical laws are concerned?

"Now look at v. 16; which, being expressed in such English as we now commonly talk, would run, I suppose, as follows: 'Thou shalt not marry thy brother's widow: she is one flesh with thy brother, and is therefore thine own sister.' Can any other interpretation be put upon it? and if this be the right interpretation, are not marriages with a brother's widow plainly forbidden among the Canaanitish abominations?"*

All this appears to me not only a fair and right explanation, with no unwarrantable deductions or inferences, but one absolutely irrefutable, unless God Himself have marked in some other place a dispensation or exception to be made to it. I know such dispensation or exception is just what is claimed. To deal with such allegation is the very object

† Ibid. pp. 13, 14.

of my addressing you, and I shall shortly come to that part of my subject. But it may not be amiss here just to call attention to the fact that Dr. M'Caul himself (whom I think I may designate as the most learned and able of the advocates for the change of the law in question) seems to admit that, were there no other Scripture to override the law as thus proclaimed, he should acknowledge the force of this part of the xviii. chapter of Leviticus as conclusive on the unlawfulness of marriage with the deceased wife's sister; for he says expressly, in his first letter on the subject, addressed to the Rev. W. H. Lyall, "On some points, I think, we agree; as, for instance, that the final appeal in questions relating to marriage must be to the Word of God. ..... I also am convinced that the laws in Leviticus xviii. being a part of the moral law, stand on a totally different footing from circumcision, or the Jewish Sabbaths, or abstinence from meats. Indeed, I believe that this marriage law was given to the Gentile Churches in the famous decree of the Council of Jerusalem. On this ground, I believe that the prohibitions of Leviticus xviii. are binding on all Christians." That is, he believes, that the general law then given, as being of a moral nature, and intended for all men, was distinctly re-enacted, and re-decreed for the sake of greater perspicuity, by the Christian Church in the Council at Jerusalem. And he goes on—"I agree, further, with those who interpret 'woman' or 'wife' in these prohibitions as comprehending widowhood, so that these females are prohibited, not only during the lives of their husbands, but absolutely and forever." And he adds—"And, lastly, I admit that from the prohibited marriages enumerated, compared with other parts of the Divine legislation, others not enumerated may be pronounced unlawful."* Where we may see that, although with a certain

* Letter to Rev. W. H. Lyall, by Rev. A. M'Caul, D.D., pp. 1—4. Wertheim, Mackintosh, and Hunt. 1859.

reserve, yet the principle of arguing from analogy, and from a case to its converse, in regard to sex, appears to be admitted. And I think I do not misrepresent the whole tone and sense of the two letters of Dr. M'Caul, when I say that I am convinced, but for the 18th verse of the xviii. chapter, he would himself readily have allowed the full weight of Mr. Keble's statement, and considered these unions to be absolutely prohibited.

But next as to the exception claimed. It is true that there is an exception to the working of the law laid down in verse 16, concerning the brother's wife, by a positive enactment in Deuteronomy (chap. xxv. v. 5—10), where provision is made for a man "raising up seed unto his brother," by taking to him his widow to wife, if the brother have died childless, that "the first-born which she beareth" may "succeed in the name of his brother, which is dead, that his name be not put out of Israel" (v. 6.) But I feel justified in saying that this alone would have been no difficulty to Dr. M'Caul (nor to any man of his reasoning powers), as to the prevalence of the general law in all cases but the special one excepted, and that but for the 18th verse of the xviii. chapter of Leviticus, our 99th Canon and the table of prohibited degrees would have been almost or quite universally accepted as the true enunciation of the will and law of God in this matter of unlawful marriages.

It is, then, to that particular passage of Holy Scripture that it is necessary to draw attention. And here, my lord, I must take up a word, which I find in your speech before referred to, which seems to me to be emphatically a word "of truth and soberness." You say, "To over-ride a command, which is distinct and precise, you must have a very clear verse and a very clear interpretation."* Dr. M'Caul quotes these words, with a distinct approval of their

* Speech of Sir W. P. Wood, pp. 5, 6.

statement, though with exactly the converse of their application. "You believe," he says, "that a very clear verse and a very clear interpretation might over-ride a command, even though it be distinct and precise, and you are right." He goes on, "Lev. xviii. 16, the verse on which you chiefly rest your Scriptural arguments, is, so far as relates to marriage with a brother's wife, distinct and precise, and enunciates a command absolutely and without any limitation; and yet it is over-ridden by Deut. xxv. 5." He means, of course, over-ridden as to the particular case of "a man's raising up seed unto his brother;" but not so as to sanction the brother taking the brother's wife in any other contingency. And this we, as well as he, allow and admit, for who shall limit the Almighty's right and power to grant or make any special exceptions to His general laws, which He may think fit? But we should have deemed it strange indeed if the whole law enacted in one place were definitely repealed in another, whilst that law was in force among those for whom it was given and designed. But so far we can well go with Dr. M'Caul. He proceeds, where, as I hope presently to shew, we have no need to follow him, and where, indeed, if his view were correct, there *would be* the total repeal of what is stated as the law in one verse, in the second verse after it. However, to go on,—Dr. M'Caul adds, "And therefore, *a fortiori*, your inferential prohibition with regard to a wife's sister may be over-ridden also by a clear verse and a clear interpretation. If weight of authority is to decide, Lev. xviii. 18, is just such a verse, and its interpretation has the required condition. Here, then, the controversy narrows itself into that which is the common and popular view of the matter: whether the inferential prohibition from verse 16 is to over-ride the expressed command of verse 18, or the plain letter of this latter verse to over-ride the inference from the former."* Now, I shall

* Dr. M'Caul's Letter to Sir W. P. Wood, 1860, p. 55.

have something further to say presently as to "the expressed command," and the "plain letter of this latter verse;" but at present let me merely remark, that we have, at any rate, Dr. M'Caul's admission that between these two verses there *is a conflict and an over-riding.* In his view even, there is discrepancy. What is, in the one, he tells us, at least inferentially prohibited, is, in the other, expressly commanded; and this, not in a case or manner parallel to the variation between the 16th verse, *prohibiting* as the general law, and the passage in Deut. xxv. 5, *enjoining* in the exceptional contingency named, but, on the contrary, in a case of a universal negative met and confronted, two verses afterwards, by a case of a, not exceptional, contradictory affirmative. And the only palliation of such a startling discrepancy in Holy Scripture is, we are to understand, that it is inadmissible to draw the inference from the woman being forbidden to marry two brothers, that the man is forbidden to marry two sisters. Although throughout the restrictions this principle is necessary to prevent the most revolting permissions under the law, and although, but for the 18th verse, no one, we believe, would have dreamed of questioning it in the particular of the man and two sisters, yet here it must be at once ignored, or you have an absolute contradiction of commands, in the same enunciation of law, within two verses.* I notice this point expressly, because I think we cannot too strongly entertain the conviction of the *unlikelihood* of such a thing occurring thus in the word and law of God; and therefore, as a reason for the most careful examination, whether we may not have overlooked the real scope and object of this 18th verse, even if we admit the correctness of the translation and of the sense. Observe, there is a great distinction between the sense and the application. Admitting the sense, I must deny the application, as I shall presently shew. But here

* See Note at the end of Appendix.

let me repeat, if there be but a fairly reasonable account to be given of the existence and application of the 18th verse, without its running us into the difficulty of this over-riding, and collision with itself of God's law, and if we hereby avoid the gross unlikelihood which I have mentioned, then surely such account and such application ought to commend itself to every candid mind, as at least worthy of the most serious consideration.

My Lord, I venture to think such account and application of the 18th verse there is; and though it has been touched upon by others, and Dr. M'Caul himself came very near it, yet it appears to have been too little dwelt upon by any, and strangely overlooked by him.*

Let me here bring the matter once more to the point of divergence. We have first the general law, "None of you shall approach to any that is near of kin to him" (v. 6). We have then the general catalogue of prohibitions which come under this head, and form the divine comment on the terms "near of kin:" and these dealing, with cases of affinity, in a majority of the prohibitions expressed, as compared with those of blood relationship (v. 7—17.) All these, moreover, be it observed, put in the statement as commands upon the *man*, leaving the obligation upon the *woman* to be inferred. Upon this statement we have Archbishop Parker's table of degrees, and of the forbidden unions, extending exactly to the parallel cases of all those named;—with the like witness also of the 99th Canon, declaring all such alliances to be incestuous;—and this table required by our law, both of Church and State, to be set up in all Parish Churches.† But we have then the 18th verse making, as is alleged, not merely an exception, but a contradiction to the parallel case of what is forbidden in verse 16 as to the brother's

* Appendix. A.

† Canon 99.—"None to marry within the degrees prohibited." "And all such marriages so made shall be judged incestuous and unlawful."

A Table of kindred and affinity, wherein whosoever are related are forbidden in Scripture and our laws to marry together.—*Book of Common Prayer.*

wife, and permitting the union with a wife's sister, so that it be not in the lifetime of the former. We thus come to what Dr. M'Caul himself considers to be a case of *over-riding*, where we must determine whether (to use again his own words) "the inferential prohibition from verse 16 is to over-ride the expressed command of verse 18, or the plain letter of this latter verse to over-ride the inference from the former."*

Now, what I am anxious to see is, whether there is any need to force upon us this *over-riding* at all. I think not.

To show what I mean, I ask this—Take the prohibition of the brother's wife first in its plain literal terms, verse 16, and then is there, independently of the 18th verse, any direct exception to it? Certainly there is. When we come to the further explication of the Jewish polity, and God's designs in reference to it, we find a special provision in the law of the Levirate, (that is, the law of raising up seed to the deceased brother), which will clash with that prohibition; for the brother is required to take his brother's wife and raise up seed to a house in danger of becoming extinct in Israel. "If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger: her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of an husband's brother unto her. And it shall be, that the firstborn which she beareth shall succeed in the name of his brother which is dead, that his name be not put out of Israel. And if the man like not to take his brother's wife, then let his brother's wife go up to the gate unto the elders, and say, My husband's brother refuseth to raise up unto his brother a name in Israel, he will not perform the duty of my husband's brother. Then the elders of his city

* Letter, p. 55.

shall call him, and speak unto him: and if he stand to it, and say, I like not to take her; then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot, and spit in his face, and say, So shall it be done unto that man that will not build up his brother's house. And his name shall be called in Israel, The house of him that hath his shoe loosed." Deut. xxv., 5—10.

In this passage there is, not what I should call a contradiction to the general law, but an exception in a particular case, and for a particular case only. It is no general permission over-riding and making of none effect the general prohibition, but a particular injunction for a special purpose in one defined contingency. If a man's brother die childless, his brother shall take his wife and raise up seed unto his brother. As it was exactly quoted in the gospel: "Master, Moses said, If a man die, having no children, his brother shall marry his wife, and raise up seed unto his brother."*

We have already observed that the authority of Him who gave the prohibitory law is sufficient to give also the permissive, or more than permissive, exception, so that we come into no difficulty as to the one, in such measure, *over-riding* (to use again the term) the other.

But of course the opponent's rejoinder is: Are you not in the very same case as to the other over-riding? Is not the authority which gave the prohibition of the 16th verse equal to give the permission of the 18th?

Granting that it is so, yet I must again call attention to this; how wholly unlikely it is that, without making any special exception, for any suggested or defined cause, there should be within two verses of each other two general laws exactly contradictory, for so they are, if the argument from parallelism is allowed. And therefore I must again urge how

* St. Matt. xxii. 24.

probable this makes it, if there be any other reasonable sense or application of the second passage not involving this contradiction, that such sense and application should be the true one, and there should be thus no over-riding at all between those two verses.

Is there then any such reasonable sense and application of the prohibition of the 18th verse? I think there is. To see what it is, go back to the exception under the law of the Levirate,* and ask whether the application of that law might not involve a man's marrying two sisters. Undoubtedly it might. Suppose two brothers to have married two sisters, and the one brother to die, leaving no child, if, by the Leviratical law the brother, as he would do under that law simply, took his brother's widow to raise up seed unto his brother, he would also be taking to wife his own wife's sister, and this, it would seem under the injunction in Deuteronomy, he would not only be permitted but enjoined to do. But was this to be without exception? I answer, No! If his own wife, the sister of the other were still alive, the Almighty did not intend this rule to be carried out in such case. He, the surviving brother, in that contingency, should *not* "take a wife to her sister to vex her,... beside the other in her life-time." The prohibition of the 18th verse of the xviii. chapter of Leviticus comes in. It comes, in the translation of the authorized version. It comes, in the sense contended for, as prohibitory if both sisters are alive together. It comes, as tacitly sanctioning the union if they are not; but it comes as limited in its application to this one case and one contemplated contingency, as God's own exception touching the two sisters "in their life-time:"—His exception, as to both sisters alive together; the exception to the exception contained in the

* It may be useful just to state that the law termed the law of the Levirate is that law laid down in Deut. xxv. 5—10, that in case a Jew dying childless, his brother should take his wife and raise up seed unto his brother.

law of the Levirate, but as having nothing at all to do with the general law: as therefore in no way interfering with or over-riding the general law of the 16th verse; in no way making its general provision of none effect, as it would do if taken in the sense and application of these reformers of our marriage law. And the above-mentioned sense and application which everyone must allow the 18th verse will bear, nay, which Dr. M'Caul tells us all Jewish authorities claim and sanction, as at least included in its legislation, is, I must contend, ample and sufficient to explain the standing of the 18th verse, and its full meaning, without supposing any other appplication whatsoever.

And let it be observed that this statement of such application to the case of two brothers having married two sisters, and the consequent duty, in the case of one brother dying childless, of the other brother to take his widow under the law of Deuteronomy, modified by the exception of the 18th verse of Lev. xviii, that such union is not to take place, if his own wife be still alive, is not mine, but Dr. M'Caul's, in a full examination of certain passages in the Mishna upon this subject. Indeed it was Dr. M'Caul's own statement, in his Letter addressed, my Lord, to yourself in 1860, which brought to my mind the main line of argument which I am endeavouring to unfold. I asked myself;—If all this in the Mishna and in Dr. M'Caul's explication of the matter, be true, why is it not the sufficient truth and the whole explanation needed? Why go on to make a conflict between the two verses in Leviticus when the 18th verse is acknowledged to be the enunciation of an exception to the law of the Levirate, and when this is a full and sufficient account of it?

It will, I think, be no waste of time to extract the passage to which I refer from Dr. M'Caul's letter, as this will serve both to make what I have here said the more

distinct, and shew also, how entirely both the Mishna and Dr. M'Caul maintain all which I have advanced as to the application of the verse in Leviticus to the case of the two brothers having married two sisters, though they refuse (at least the latter) to stop at this point.

I ought to say thus much as introduction to the Extract. In his first letter Dr. M'Caul had mentioned the Mishna as confirming his view. "The Mishna compiled in the second century testifies that it (this permission of the marriage) was the common and received sense of the Hebraizing Jews."* This drew some remarks from the writer of one of the Tracts published by the Marriage Law Defence Association, (Tract 8, p. 4, and Appendix, quoted also by yourself in the Appendix to your speech,) upon the statements of the Mishna, which again caused Dr. M'Caul in rejoinder to examine those statements and to comment upon them afresh in his letter to yourself. I need not go back to the first two pamphlets. Dr. M'Caul's explanations in his second letter will shew all which I want to exhibit. Complaining of inaccurate quotation on the part of the writer of Tract 8, he says,

"I will give the passages as they stand in the Mishna, and you, Sir, may judge of the faithfulness of this writer in making quotations. The words of the Mishna are :—

> 'Suppose three brothers, two of them married to two sisters, and one of them married to a stranger—one of the sister's husbands dies, and he who is married to the stranger takes his widow—then the wife of the second dies, and after that he that is married to the stranger dies, behold this *widow*, (*i.e.*, the surviving sister) is prohibited to him for ever, because she was prohibited to him for *one hour*.'

"Now, Sir, you will perceive several differences between this statement of the Mishna and that of the Appendix. 1st, The Appendix says,—"It is declared, that if that

* Letter to Rev. W. H. Lyall, p. 14.

brother's wife is his own wife's sister, he may not marry her.' The Mishna makes no such general statement, but confines itself to a particular case. 2dly, The reason the Mishna gives for the prohibition of the surviving sister is that 'she had been prohibited to him *for one hour*,' which the Appendix omits altogether. 3rdly, The Appendix says, 'And the reason assigned is, that *the man and his wife's sister* are related *within the degrees forbidden by the holy law* to intermarry,' not one word of which is in the text of the Mishna, as you see. The Mishna gives the reason correctly, *she had been prohibited to the second brother for one hour, i.e.*, her widowhood commenced whilst her sister was still alive and the wife of the other brother, in which case the *Rabbis* rule that she is prohibited for ever.

"To make this plain, I will put letters as in the Appendix:—

"Two brothers $\left\{\begin{matrix}A\\B\end{matrix}\right\}$ marry $\left\{\begin{matrix}M\\N\end{matrix}\right\}$ Two sisters.

"A third brother, C, marries S, a stranger, *i.e.*, no relation.

"A dies; M is left a widow.

"C marries M, A's Widow, to fulfil a brother-in-law's duty, which B could not do, because to marry two sisters simultaneously is forbidden by Lev. xviii. 18. This is the 'one hour' during which M is prohibited to B.

"N then dies, and B is left a widower; but he is not allowed to marry M, left a second time a widow, because on the death of A, whilst N, his wife, was alive, M was prohibited. Out of this particular case, by putting in words not in the Mishna, and by leaving out the words 'one hour,' which are in the Mishna, the writer has made a new Rabbinic law, unknown to the Mishna and its commentators, and from a particular case has drawn a general conclusion, opposed to Jewish law and practice. For, take the

deaths in a different order, so as to avoid the 'one hour,' and then B might marry M. Thus:—

"Two brothers $\left\{\begin{matrix}A\\B\end{matrix}\right\}$ marry $\left\{\begin{matrix}M\\N\end{matrix}\right\}$ Two sisters.

"A third brother, C, marries S, a stranger.

"Suppose that N dies first, and after she is dead A dies without children, then B may marry M, because she had not been 'prohibited to him for *one hour*,' *i.e.*, she had not been a widow whilst his own wife was alive. The second case alluded to is exactly similar:—

> Mishna III. 9.—'Suppose two brothers [A and B] married two sisters [M and N]. If one of the brothers [A] die, and afterwards the wife of the second [N] die, then the widow [M] is prohibited to the surviving brother [B] because she had been prohibited to him *one hour*.'

"But suppose that N had died first, and then A died without children, then it would have been lawful for B to marry M, as may be seen in Maimonides, Yad Hachazakah, Hilchoth Yibbum, ch. vii., § 3, 4, where there is an analogous case. The prohibition in the one case, and the permission in the other, depends, not upon the words of the law, but upon a general rule *laid down by the Rabbis;* that the lawfulness or unlawfulness, as well as the obligation to perform the duty of a brother-in-law, is regulated by the state of things existing at the moment when the brother died."*

I have extracted the above at full length, because at the same time that it shews all I want and even more than I want for my purpose, it yet also shews no contradiction to what I want, whilst it shews also that I suppress no part of Dr. M'Caul's statement or argument. I say that it shews something more than I want, though nothing contradictory to it; because I have no need to consider either the third case of a brother marrying a stranger,

* Letter to Vice-Chancellor Sir W. Page Wood, p. 29—31.

or the case of the *one hour* commented upon by the Mishna, or at least this case no further than as it brings out into the plainest prominence Dr. M'Caul's own witness to the sense of Lev. xviii. 18, that it forbids "B to marry A's widow, because *to marry two sisters simultaneously is forbidden by Lev. xviii.* 18." That is, by the law of the Levirate simply, this would have been required, but by the exception of the above verse it is forbidden.*

And this is what I mean by saying the passage shews all I want. It proves incontestably that according to the Mishna, according to the Jewish Rabbis, according to Dr. M'Caul, the enactment of the 18th verse of the xviii. of Leviticus was inserted, for the very purpose which I have all along supposed:—that it was the declaration of God's will, that when the operation of the law of the Levirate *per se* would bring about the brother taking his own wife's sister to wife to raise up seed unto his brother, *then* the exception to the exception came in and forbade him to do so, if her sister, his own wife, were alive. And this is what made me say (p. 13) that Dr. M'Caul came very near to the application of that text which I have been unfolding, though I was obliged to add, he overlooked its importance in interpreting the law as contained in Leviticus, for he allows that the 18th verse of Leviticus xviii. reaches to, is intended to reach to, and to forbid, this especial union, which otherwise would have been enjoined by the law in Deut. xxv., but it appears never to have occurred to him that this is the ample and sufficient explanation of the existence of that 18th verse. He never seems to have conceived it possible that it should be restricted to being the exception to the Leviratical Law, and not be a general Law itself.

I would, my Lord, for many reasons, had it so pleased God, that Dr. M'Caul were alive. His ability and learning, his strong sense and true piety, and not least his willing readiness to

* Appendix B.

join with those who might differ from him in many points in the defence of our common Church and common faith against the assaults of infidelity and rationalism, make his death a no ordinary loss to us in days like these. But beyond this, I own, had it so been possible, I should have liked to point out to him how his own statements, his own authorities, and his own reasoning had been the very means to lead me to the conclusion, that we find a very complete and sufficient explanation of the existence and meaning of the 18th verse of Lev. xviii., without any occasion to resort to so violent an over-riding one statement of Scripture by another, as he has advocated. And this too without having to question the ordinary translation of the verse, or to find any difficulty in the sense of the words, "in her lifetime." All this, at any rate for the sake of argument, I seem able to concede to Dr. M'Caul, to take his own account of *an* application of the passage, and only add, that it seems to me to be *the* application, and the only application needed. I cannot forbear adding, that if there be but a chance of this being so, it makes it a most serious thing for anyone to speak lightly of the restrictions in question—not merely of this one of the brother's wife, but of all those laid down in this chapter of Leviticus, or to *think* even of relaxing that code; for who shall say that we shall not thus "haply be found to fight against God," and be bringing ourselves and our country under the curse of His Word, denounced against all who defile themselves in these things: "Ye shall therefore keep My statutes and My judgments; and shall not commit any of these abominations, neither any of your own nation, nor any stranger that sojourneth among you: (for all these abominations have the men of the land done which were before you, and the land is defiled:) that the land spue not you out also, as it spued out the nations that were before you. For whosoever shall commit any of these

abominations, even the souls that commit them shall be cut off from among their people. Therefore shall ye keep Mine ordinance, that ye commit not any of these abominable customs which were committed before you, and that ye defile not yourselves therein: I am the Lord."* In these days, my lord, we have many things to make us anxious—many things, I do not go too far in saying, to make us tremble; but I hardly know anything which should fill us more with anxiety, fear and trembling, than the thought that our legislature should bring us under this terrible curse of God, by sanctioning, as the act of a people among whom "Christianity is" still "the law of the land," any one of those abominations, for which even the nations of Canaan were cut off and spued out. And as to individuals, I must say, there are to me few things more calculated to raise mixed feelings of pity, contempt and horror, than the levity and recklessness of some of those who are advocating the change—pity for the ignorance of many who have been misled by mere bold assertion, contempt for the reasoning powers of others who seem never to dream of looking at any side of the question except that on which their own passions, prejudices, or wishes are enlisted, and horror at the fearful temerity of those who dare approach and argue upon such a subject, without at least a sense of its importance, of the reverence with which all discussion relative to it should be conducted, and an awe, at any rate, as to the possibility, after all, of God's law and will being in accordance with the Church's interpretation of it for so long a time, and wholly against the "new thing" which the spirit of modern lawlessness seems anxious to introduce!

My Lord, I have not designed or attempted to go through the whole argument on the question of the alteration of

* Lev. xviii., 26—30.

the Marriage law as now proposed, but have sought to confine myself to these points:

I. That the whole strength of the case of the promoters of the change, so far as Holy Scripture is concerned, rests upon the text, Lev. xviii. 18, this text being taken to override the prohibition of Lev. xviii. 16.

II. That the contradiction of two general laws in God's Word, the one to the other, in the course of three verses is highly unlikely and improbable; so improbable that we are justified in expecting to find some other solution of the difficulty.

III. That in the case in hand, there is another solution falling very naturally into its place by careful comparison of Scripture with Scripture.

To sum up the general argument, even at the risk of some repetition, we may state it thus:—

(i.) We have the general rule laid down: "None of you shall approach to any that is near of kin to him" (verse 6).

(ii.) We have the instances and exemplifications of what this "nearness of kin" means, all of these given directly with reference to the *man*, leaving the corresponding *woman's* duty to be inferred (verses 7—17).

(iii.) We have the particular case of the brother's wife (verse 16); whereupon, by parity of reasoning, is inferred the prohibition of the wife's sister, it being here to be observed, that unless the cases of the different sex, by parity of reason, be taken as contemplated by the Holy Ghost in giving this Scripture, we have no written law against several most frightful kinds of incest.*

(iv.) We have an exception to the very letter of the law as to the brother's wife, by the injunction of the law of the Levirate, in the provision for preventing the extinction of a house in Israel, by the brother's taking his deceased brother's

* See Dr. Pusey's Evidence before the Royal Commission, First Report, p. 37, questions 431—3.

wife (if he have died childless), and raising up seed unto his brother: this, not in the nature of a prohibition, but of an exceptional injunction or command. (Deut. xxv. 5—10.)

(v.) We have an exception to the above exception, forbidding its being extended to the taking the wife's sister in the case of the above injunction working (as in one special case it might work), to the result of a brother, in taking his deceased brother's widow, taking also, by the same act, his own wife's sister, and thus, if his own wife were still alive, having the two sisters together as wives. For this would be the case, were there no exceptional prohibition, when two brothers had married two sisters, and when, though one of the brothers had died childless, yet both sisters were alive. Then there comes in the exception: "Neither shalt thou take a wife to her sister, to vex her.....beside the other in her lifetime" (verse 18); as if it were said, In no case—no, not when the law of the Levirate would otherwise require it—no, not when the saving of a house in Israel from extinction would otherwise demand it—shall a man take his wife's sister, his own wife, her sister, being yet alive: where, too, we may observe, that the parallelism in the cases of the two brothers and the two sisters is strictly and exactly maintained; for the woman in no case *could* take a second brother, the other being alive; for her husband, the first brother, *must be dead* before the law of the Levirate could operate at all; therefore the wife's sister *could not* (even when two brothers had married two sisters) take her husband's brother beside the other in his lifetime, and thus the wife's sister is exactly equally restrained from taking the sister's husband, when the circumstances would lead to it by a man taking "a wife to her sister.....beside the other in her lifetime."

Thus, too, it is clear that the law of this 18th verse is a law of prohibition, not of relaxation, and therefore naturally

and properly comes in its place with the other prohibitions of this 18th chapter of Leviticus.

And I venture to submit, that this is the whole meaning and application of this much controverted verse: viz., that it is not in the nature of a general law at all, but is merely the declaration of an exception to an exception—an exception to preclude two living sisters being simultaneously the wives of one man, even when the law of the Levirate, but for this prohibition, would lead to such result. I must add, that to me it seems to be a full, natural and sufficient explanation of the passage without any further application at all, that is, without supposing it to have anything to do with the general law, or to be any relaxation of the prohibition of the 16th verse as to the brother's wife, or the converse case to it, by analogy, as to the wife's sister.

Possibly the exact bearing of the foregoing argument may be made plainer by a paraphrase of the Scriptural statements, putting them something into the form of statute law, by which means the different provisions of the several passages may be combined and their connection be seen, as various provisions in the clauses or sections of an Act of Parliament are read together. I dare say I shall expose myself to not unjust criticism for technical blunders, in attempting to adopt Act-of-Parliament phraseology; but I shall be content to bear this, if I may attain my main object, viz., to shew how the different parts of the law combine and should be read in connection with each other, and especially what is the force and due application of what will be, so to speak, the last clause or section in the Act.

Suppose, then, God's law as to these marriages to stand in the statute-book of a Jewish Parliament, imagining for the moment such to have existed. Might not the principal enactments stand something in this way? It will be under-

stood that a permission or tacit sanction of polygamy must be assumed, as part of the common law of the community.

Say, then, that the enactments in question stood thus :—

§ 1. Be it enacted, that none shall inter-marry with any related to them, whether by blood relationship or by affinity, within the following degrees, as set forth in the annexed schedule :—

None to intermarry with those near of kin.

(Then suppose Archbishop Parker's Table of Prohibited Degrees here annexed as the schedule.)

Schedule of Prohibited Degrees.

The Act would then continue :—

§ 2. Provided always, that, in reference to the above prohibition of the brother taking his brother's widow, it shall yet be lawful, authorized and required (under penalty of a stigma of disgrace, to be attached to him who fails in compliance), that in the case of a man's brother dying childless, in order to prevent the extinction of a house in Israel, his brother shall take the deceased brother's wife, and raise up seed unto his brother; and, therefore, that the first-born child of such union shall succeed in the name of the brother who is dead, and be accounted and taken by the law of this land as not of the family of the second brother, but of the first, and shall be the heir, both in name and possessions, of that deceased brother, whose widow's child he is.

Brother to marry deceased Brother's Wife, to raise up seed untohisBrother.

§ 3. But, inasmuch as in the case of two brothers having married two sisters, the enactment of the preceding section might, and, in the event of one brother dying childless, would, authorize and require a man to take to wife two sisters, his brother's widow being in such case his own wife's sister, and whereas, if his own wife should at such time be alive, this might lead to rivalry and vexation, be it further enacted, that nothing herein enacted, in the previous section

But none to take a wife to her sister, beside the other in her life-time.

or in any part of this Act, shall authorize, permit or require any brother, even for the purpose of saving a house and family from extinction, to take to wife the sister of his own wife, his said wife her sister being yet alive; and be it therefore enacted, that in such case, where such would be the result of the enactment of the previous section of this Act the provision of the said previous section shall become inoperative and of none effect, rather than a man take a wife to her sister to vex her, beside the other, in her lifetime.

Upon this illustration I will only ask—Would not such an Act of Parliament be perfectly distinct and clear? Could any one possibly misunderstand it? Would not every clause and section have its own plain and intelligible sense? Especially would not the last clause or section have a full and sufficient both sense and application without any man's dreaming for a single moment of there being contained in it a repeal of any portion of the table or schedule of degrees? I say contained *in it*, because no doubt the second section would contain something of this kind, and yet, be it observed, not a repeal, but a partial exception; that is, in one particular case, and for one particular specified purpose, the second section would modify one entry in the table, that of the brother's wife or sister's husband (as it is confessed on all hands, the law of the Levirate, Deut. xxv., does modify the law of the 16th verse of Lev. xviii.), but even so, I must insist upon it, not *repealing* it; for the exception would operate *only* when the brother had died childless, leaving the entry in the schedule in fulness of prohibition in all other cases. And it is beyond all question that that modification would be due to the second and not to the third section of the Act. The third or last section would have nothing to do with any relaxation of the law, but would be merely a restrictive provision in relation to the working of the previous section, being, as I have all along been shew-

ing, a narrowing, not an enlarging the liberty given under the exception in the previous clause and having no further bearing:—therefore having nothing to do with any entry in the schedule; nothing to do with the permission to take the brother's wife or the sister's husband, and, if so, nothing at all to do with the object for which that clause, so to speak, is used by the promoters of the change in our law, as proposed in the Wife's Sister's Marriage Bill.

Moreover, does not this account make it perfectly intelligible why the first section should remain in the integrity of its enactment, and all the entries find their place in the schedule, because no single entry is repealed even by the modification caused by section 2? But surely it would have been absurd to enact, or to retain in the table, the entry as to a brother's wife or sister's husband, if an almost immediately subsequent contradictory enactment were wholly to repeal it, as contended by the promoters of the Bill in question.

I do not know that I have more to add unless it be to meet briefly a possible objection from the law of the Levirate not being found in the same place with the other two passages, nor indeed in the same book of Leviticus, but in another book of Holy Scripture. It may, perhaps, be asked—Is it not strange and unnatural to find the exception to an exception entered where the first exception itself is not recorded, and perhaps even before that exception was made at all?

I would reply, first—

If this be an objection, it is one to which the Mishna, and the Jewish Rabbis, and Dr. M'Caul are open just as much as I am. For they all acknowledge and maintain that upon that 18th verse of xviii. Leviticus is founded the prohibition which they all claim as to the brother in the case of two brothers having married two sisters; of the one

not being permitted to obey the injunction of the law of the Levirate, as to taking the other's wife in the particular case of the one brother leaving a widow whilst the other brother's wife is yet living.

I would reply, secondly—

That the objection, from the exception in Deut. xxv. not possibly having been then made, is as nothing when the lawgiver is not man but God, who knows from the beginning all which He intends.*

I would reply, thirdly—

That a fair and reasonable account of the statements in Leviticus xviii. not alluding directly to the law of Deut. xxv., and not in any way indicating the exception there made or to be made to the prohibition of verse 16, is to be found in this: that all the statements in that chapter of Leviticus are *prohibitions*, whilst the record in Deuteronomy is a *permission* or indeed a *command*; that, therefore, it is perfectly reasonable and natural that we should not find prohibitions and relaxations of the law mixed up together. Thus Leviticus keeps to its prohibitions, verse after verse, with the warnings and denunciation of penalties proper to its subject; and Deuteronomy deals with its exceptional relaxation, and the duties and consequences therewith connected. And it may be just worth while to add that although the 18th verse of Leviticus xviii. is an exception, it is still in the sense and application which I have been enforcing, a prohibitory not a permissive exception; a consideration which not only shows it is in its due place among the other prohibitions, but also strengthens the view taken in this letter of its being no more than a prohibition. It *prohibits* the taking two sisters simultaneously, even under circumstances which, but for its existence, would have

* It is, moreover, evident that something of the kind of the law of the Levirate was a usage of the Patriarchal times, from the history recorded as to the sons of Judah in the book of Genesis.

required such union, and it does not permit anything as against the laws of the 6th and 16th verses. Were Dr. M'Caul's view, and the view of the promoters of the alteration of our law of marriage correct, we should at least have the anomaly of a permissive precept foisted in, if I may so say, among the prohibitory sentences of this chapter, dealing in all else with prohibitions only. For, it is plain, to read the verse as meaning a man may marry two sisters, if it be not simultaneously, is a permission upon the previous restriction; whilst to say a man may *not* marry two sisters simultaneously, even when the law of the Levirate would seem to demand it, is a prohibition. The law of Deuteronomy, therefore, (the law of the Levirate,) being a permission or command, not a prohibition, makes it no marvel that that injunction is not found among the prohibitions, whilst that the prohibitional exceptional decree of the 18th verse of Lev. xviii., should be found where it is, among the prohibitions, is no marvel either.

I would reply, fourthly—

That to find the law of the Levirate in this place in the Book of Leviticus would have been to find a provision solely and simply of the Jewish economy and polity, most unnaturally intermixed with the provisions of God's general moral law:—that is, what is applicable solely to Moses and the people under him, confused with the law intended for all nations and people, as witnessed by the denunciations of that chapter of the book of Leviticus with which we have been concerned. How is it possible to suppose the Levirati-cal injunction of Deuteronomy could have found a place among the things prohibited and condemned as the abominations of the Canaanites and Egyptians?

I would reply, fifthly—

That if any further answer to the above objection be

needed, there is, at least, the general and most sufficient reply, that we are no judges of the right collocation of different points in God's revelation to man. When we see the fitness of anything, even as we can judge, we may glorify Him and be thankful; when we cannot, we may and should "put our mouth in the dust" and be humble. If things are not made more plain to us than they are, or even are less plain than they might have been, let us remember our state of trial, and acknowledge that all such may be, for ought we know, exactly so revealed as they are, and so placed as they are, for our trial. There is no reason why we should not be tried just as much as to difficulties put before our intellect, as by temptations appealing to our passions; and, as Bishop Butler has remarked, there are some men who, but for the former, might be found to have hardly any trial at all. (Analogy, Part ii., chapter 6.) If the particular objection here advanced be analyzed, it will be found to be but this:—Why should there have been *an omission* of this law of the Levirate in Leviticus, when, in the same place, there is the record of a prohibitory exception to it? But who shall pretend to account for the omissions of Holy Scripture? Take but that one record in St. Luke's Gospel of the two disciples who, on the morning of the Resurrection, walked to Emmaus, and were met by Jesus on the way, as they talked of those things which had come to pass, and were sad. What can be more wonderful to our conception than what we find, and what we do not find! After their converse concerning Jesus of Nazareth, which was a Prophet mighty in word and deed before God and all the people, we find that He himself, "beginning at Moses and all the Prophets, expounded unto them in all the Scriptures the things concerning Himself."* But we *do not find* a single syllable of all this discourse recorded in the Gospel.

* St. Luke xxiv. 27.

If we judged by what seemed to us likely, how sure should we feel that it would have been set down! Oh! how many difficulties might have been met! how many objections have been answered! how many heresies have been avoided! how great a flood of light have been thrown upon various points of history, prophecy, and doctrine! and how great a guide have been given for all in life and conduct! had it seemed good to the Holy Ghost to let the Evangelist record that discourse. If we judged by our sense of likelihood, should we not say, "What could be so full of interest and of edification! How important! how needful for us to know what our Lord said, when beginning at Moses and all the Prophets, He expounded unto them in all the Scriptures the things concerning Himself!'" But not one word of it is set down, and, perchance, for the very cause that it would have too much abridged our trial had we possessed such an exposition, and that we may learn in all things not to judge amiss as to the hard things or the secret things in God's Word nor to think "His ways are as our ways." Had that discourse been placed before us, perchance there had never been an Arian or a Socinian in the world. (How good we might think it!) Had the whole marriage law of God, if we may so say, been systematically set down in His holy Word, it may be there would have been none now to tamper with it. (How happy, too, we should think it!) But we might as well say, "How happy if Adam had had no trial put upon him, and so had never fallen!"

But our duty is, as it is, and as God has thought fit to set it before us. He has revealed to us His law and will in such manner and degree as seemed to Him good. It is our's to receive it and to seek to understand it as most humbly and reverently we may, and, asking His grace and help, to do our best to keep it: to keep it individually in our own lives,

and so far as He permits us, to keep it from all defilement or breach in the laws of our country. We call ourselves, and rightly, a Christian country, for we are, as baptized into the body of Christ, His members. Let us remember, if even carelessly, much more if wilfully, we go against His commands, and set human law in its permission against the divine law in its prohibition, we are rebellious against Him who is our God and our King; we are going back from our Christian state and profession; we are placing ourselves on the level of the nations—the Egyptians and the Canaanites—who committed all those abominations, against which His curse is denounced who is "the same yesterday and to-day, and for ever."

I have the honour to be,
My Lord,
Your Lordship's very faithful and humble servant,
M. W. MAYOW.

Buckingham Road, Brighton, July 14th, 1869.

P.S.—Whilst these sheets are passing through the press, I am reminded of an objection taken to the whole line of the argument of my letter upon the very strength of the law of the Levirate. I am told (and I think the view was touched upon in the report of the Commission) that there are some who deem the law of the Levirate to be the total repeal of the prohibition as to the brother's wife (which most certainly it is not),and who would then go on to say,And,upon your own shewing, after the wife's death this very law of the Levirate will bring you to the conclusion of marrying the wife's sister.

I should, perhaps, hardly deem it necessary to notice seriously such an objection, but that I hear of it as actually made or revived at the present time. I will then say a few words upon it. I reply; Consider what must be assumed,

and what must be denied, to bring this argument in any way to bear upon the question before the Legislature.

First—It must be assumed that the law of the Levirate is a law binding upon Christians; that it is a law, not simply intended for the Jewish economy, but that a Christian man is intended to take his brother's widow, if he have died childless, and raise up seed unto his brother.

Secondly—It must be assumed that this object is to be attained, not by the taking the brother's widow, but by taking the wife's sister, which is the object of the Bill, but was not the object at all of the Jewish legislation, and which, moreover, is absolutely absurd as to the end of raising up seed unto a brother.

Thirdly—It must be denied that polygamy is forbidden to Christians; for if the brother in the case supposed have a wife previously to his brother's death, (this wife being still alive, but not the sister of his deceased brother's wife,) then, according to the law of the Levirate hereby assumed to be in force, he must still take his brother's widow to wife to raise up seed unto his brother.

Or, Fourthly, if the argument be not carried quite so far, and it be maintained that the brother should say, "I cannot take her, lest I mar my own inheritance;" or, "I cannot take her, as I have already a wife;" or, "I like not to take her for I am engaged to another;" or, if he should for any cause refuse, then, at least, if the law of the Levirate be binding upon us (which is the argument; for if not, it does not help the promoters of the Bill at all), the refuser should undergo the penalty provided in the case, and we should have to witness the scene of the widow, or the wife's sister, calling together the elders of her city, and loosing the shoe of her husband's brother, or sister's husband, and spitting in his face and saying, "So shall it be done unto that man that will not to build up his brother's house;" and we should

have to revive the name of "the house of him that hath his shoe loosed."

No! Who does not see that the whole scope and intention of the law of the Levirate was Judaical, and limited to and exhausted by that economy. And, therefore, if the connection between the law of the Levirate and the 18th verse of Lev. xviii. be established, as I have endeavoured to shew it is, it will follow that the exception to that law *must* belong exclusively to it and expire with it; and, therefore, that the supposed permission to take the sister, "beside the other," if it be not "in her life-time," has, as I have all along been arguing, nothing to do with us as Christians at all, but is tied to and restrained by the law of the Levirate, and of the Jewish dispensation. Under it, it was lawful, it was enjoined, when a brother died childless, for the brother to take his wife and raise up seed unto his brother; and this would be lawful and enjoined in that particular case even when his brother's widow was his own wife's sister, if his own wife, the sister of the other were dead. But among Christians I cannot believe that any one seriously believes for a moment that the law of the Levirate remains, and so no one can suppose, if the 18th verse of Lev. xviii. be merely the exception to that law, that it has any bearing upon, or gives any permission to, Christians in their marriages at all.*

M. W. M.

*Appendix C

APPENDIX A.

The only two passages which I have met with taking the same line of argument with that of the foregoing letter are the following. In an appendix to the Speech of Vice-Chancellor Sir W. Page Wood, Feb. 1st, 1860, I find this comment upon the statements in the Mishna :—

"The passages from the *Mishna* afford singular support to the view which the Bishop of Oxford, at the late meeting, stated to be held by some divines in America, viz., that the difficult 18th verse of the 18th chapter of Leviticus was, in fact, a special prohibition against a wife's sister being married to her brother-in-law, even when the exceptional *Levirical* law (or law by which the brother-in-law was to raise up seed to his deceased brother) might otherwise have appeared to supersede the general code of the 18th chapter."

In an article recently reprinted from the Church Review, of February, 1861, understood to be from the pen of the Rev. T. W. Perry, I find also this :—

"May it not be, then, that the prohibition simply related to the (apparently) Patriarchal requirement (see Gen. xxxviii. 8), enforced in Deut. xxv. 5—10 (that is, *after* the Levitical prohibitions were given), which commanded the *next kinsman* to marry the widow of one who died without issue, in order to preserve the inheritance? For if the next kinsman was a brother of the deceased, the duty of raising up seed to his brother first devolved upon him. But he might refuse to perform it. In that instance he underwent a kind of punishment. The widow loosed his shoe and spat in his face before the elders of his city (Deut. xxv. 8 and 9), and he became stigmatized as 'the house of him that hath his shoe loosed' (v. 10). This liberty to refuse (see also Ruth iii. 12 and iv. 6) may have been a Divine relaxation of the Patriarchal rule, designed, perhaps, to render more effectual the prohibition in Lev. xviii. 18. But it may not improbably be, that the penalty attached was meant to secure the custom from contempt, by deterring the kinsman from excusing himself on grounds which the law of the Levirate (*i.e.*, the law of raising up seed to the deceased brother) did not mean to recognize."

Then, after some remarks upon the jealousy or vexation likely to arise, the writer continues :—

"May it not, therefore, have been that God designed, in Lev. xviii. 18, to provide against this evil, which was very likely to attend upon the performance of the existing rule, and of his own command (then to be given) touching the marriage of the deceased brother's wife?

"Yet, how does this explanation meet the difficulty arising from the alleged permission contained in the words (v. 18) 'in her life-time?' Thus—If the next kinsman's wife were already dead, or if she died before the kinsman's part had been done to the widow, or after that part had been done by another kinsman, who had died leaving the widow still childless then, as she *could not be vexed*, the widow's brother-in-law was free to marry her, for the purpose specified in the Levirate law."

And again :—

"Since this first suggested itself to us, we have learnt (see Tract x. p. 21, of the Marriage Law Association) that the *Mishna*, treating of the civil law

of the Jews as to marrying the deceased brother's wife, says that he may not marry her *if she is his own wife's sister*, and, moreover, that the prohibition holds good *after* the wife's death. It is possible that this latter part of the tradition may be akin to what our Lord called (S. Mark vii. 9) 'your own tradition,' and so may have tended to 'frustrate the commandment of God,' in Lev. xviii. 18, by perplexing the interpretation of the words, 'in her life-time."

I may add, however, as shewing my argument to be an independent witness to the same sense and application of Leviticus xviii. 18, that I had no knowledge of either of these statements when I sketched out the argument of the preceding letter.

APPENDIX B.

I have said that I have no need to enter into the question of the "one hour" mentioned in the Mishna. And this is certainly, true, because the question which I have been considering is not whether, if a wife's sister be forbidden at all she is forbidden for ever by both being alive together at a certain time but simply whether the whole matter involved in the words "in her life-time" be not explained and accounted for by its being a prohibition, narrowing the requirements of the law of the Levirate, and nothing more. But it may be added that the statement of the Mishna as to the "one hour" is certainly rather confirmatory than not of the second sister being wholly forbidden, except under that law's provision in the case of the death of the one previous to the widowhood of the other, because if the being forbidden for one hour forbids for ever, the second sister, whether herself a virgin or the widow of a stranger, being (like the brother's widow left a widow in her sister's life-time) marriageable to any other man than her brother-in-law, during all the time of her sister's married life, (she, I say,) would be all that time forbidden to him. This would answer certainly to the one hour, and if so, under the Rule of the Mishna, she would be forbidden to him for ever, which brings us to the general prohibition under the general law.

Whether the above inference of the Mishna be a legitimate one from the words "in her life-time," that is, that the forbidding should depend for ever upon the state of things at the time of the brother's death (as Dr. M'Caul expresses it), I need not determine. Mr. Perry, in one of the extracts above, seems to think it might rather be one of the additions by which the Jews frustrated "the Word of God by their tradition," and possibly it was so. But at least we may say that there appears to be a weighty moral consideration to support the view of the prohibition extending from one hour to the future life. Because thus, in the case of a man finding his brother's wife a widow, being his own wife's sister, and perchance preferring her to his own wife, he might otherwise be tempted to get rid of his own wife,

by divorce (so easily obtainable as divorce became among the Jews) or otherwise, if such after-release set him at liberty to marry his brother's wife, being a widow: a temptation be it observed not occurring as to any other woman left a widow by his brother's death, because the tacit sanction given to polygamy under the Jewish dispensation would in that case render it unnecessary to obtain release from his own wife at all in order to take her. If the brother had died childless, he would be enjoined to take her, irrespectively of his own wife being alive. If not childless, he could never take her at all. And this moral reason is not perhaps wholly unworthy of consideration as applying to the general question of marriage with a wife's sister in a state of things in which polygamy is forbidden. If the greater intimacy arising between a man and his wife's sister might, if unrestrained by the knowledge that she can never under any circumstances become his wife, tend to produce attachment, who shall say it is not a merciful and a wholesome restraint, that she should be forbidden to him for ever? And this restraint, be it remarked, would be wholly lost under the change in our law now sought.

APPENDIX C.

The drift of the objection considered in the Postscript may receive an illustration from that great moral drama, in the plot and conduct of which horror at the incestuous connection of the king with his brother's widow bears so prominent a part. The case of the objector who would make the law of the Levirate a dispensation for Christians, is just as if Claudius king of Denmark had pleaded that law, though his brother had not died childless (for no modern legislation proposes to regard this limitation), as a reason for taking to wife his brother's widow;—or, as if, yet further, had Queen Gertrude died, leaving a sister, he should plead again that same law (for all modern legislation proposes to go to this extent), to sanction his afterward taking her also to wife. Surely all this, as the king says of another matter, is "absurd to reason."

NOTE TO PAGE 12.

It is of much importance to mark clearly how absolute, upon Dr. M'Caul's reading of Leviticus xviii. 18, is the contradiction involved. I add, therefore:—Let it be well observed that a time beyond that expressed by the words "*in her life-time*," must be understood to be of the essence of all the prohibitions. That is to say (and the awful importance of the matter requires it to be stated plainly), that it is incest and not adultery which is the subject of the prohibitions throughout. A man is prohibited from marrying his Mother not merely during his Father's life-

time, but always—his Sister, not merely, if she be married, and, if so, during her husband's life-time, but always. So of the Brother's Wife, and the rest. Therefore according to the interpretation insisted upon, the collision is, as stated in the text, a complete contradiction; a universal negative on the one side met by a particular affirmative on the other, just as if one should say, negatively, "No horses are black," and then immediately add, affirmatively, "Some horses are black." For, the statements drawn out in full, including the case by parity of reasoning from verse 16, would stand thus:—

Thou shalt not take thy Brother's Wife, whether in thy Brother's life-time or not.

Thou shalt not take thy Wife's Sister, whether in her Sister's life-time or not.

Thou mayest take thy Wife's Sister, if it be not in her Sister's life-time.

Such is the over-riding demanded by Dr. M'Caul's position, and necessary to the argument if this 18th verse is to be made in any way available for the purpose of the promoters of the change in our marriage law. The improbability of such a contradiction within two verses, including an assumed change in the subject matter, from incest to adultery, in a continuous catalogue of the enormities denounced, can, as it appears to me, hardly be exaggerated.

There is one consideration further to which it may be well to call attention, viz., that the *translation* of Lev. xviii. 18, is not to be confused with its *interpretation*. Dr. M'Caul naturally insists much upon the translation, and in addition to his own critical judgment, allowed to be of great weight from his known eminence as an Hebrew Scholar, he gives many authorities in favour of the rendering as it stands in the text of our authorized version. Still it is to be remarked that the authorities whom he cites for the translation are by no means at one with him as to the interpretation. This point will be found very fully treated of in the second letter of the present Lord Chancellor to the Dean of Westminster, printed in 1861,* and, if I remember rightly, it was also examined and the result put very forcibly by the Bishop of Exeter in the postscript to his letter to the late Bishop of Lichfield, published, I believe, in 1860, where it is observantly noted that of all our Reformers cited by Dr. M'Caul as having accepted the authorized version as to the rendering of Lev. xviii. 18, there is not one who has gone with him in the application of it which he advocates, inasmach as they have all either explicitly or implicitly received our table of prohibited degrees: a proof that even from Dr. M'Caul's premiss, as to the translation, they have not come to his conclusion as to the interpretation. And it is plainly in the interpretation, not in the mere translation, that the above-mentioned contradiction is involved.

* Second Letter of Vice-Chancellor Sir. W. Page Wood, pp. 47—63.